

HON. JAMAL N. WHITEHEAD

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

IN RE VALVE ANTITRUST
LITIGATION

No. 2:21-cv-00563-JNW

**DECLARATION OF KENNETH J.
RUBIN IN SUPPORT OF COLVIN
PLAINTIFFS' AMENDED MOTION TO
APPOINT VORYS, SATER, SEYMOUR
AND PEASE LLP AS INTERIM LEAD
CLASS COUNSEL**

This Filing Relates to:

ALL ACTIONS

NOTE ON MOTION CALENDAR:
January 17, 2025

1 I, Kenneth J. Rubin, declare:

2 1. I am a partner at Vorys, Sater, Seymour and Pease LLP (“Vorys”) and serve as lead
3 counsel for Plaintiffs Sean Colvin, Susann Davis, Hope Marchionda, and Everett Stephens and the
4 putative consumer class plaintiffs (“Colvin Plaintiffs”) in the case captioned *In re Valve Antitrust*
5 *Litigation*, Case No. 2:21-cv-00563-JNW.

6 2. I respectfully submit this declaration in support of the Colvin Plaintiffs’ Amended
7 Motion to Appoint Vorys, Sater, Seymour and Pease LLP as Interim Lead Class Counsel. I have
8 been actively involved in this action, am familiar with the proceedings, and have personal
9 knowledge of the matters stated herein.

10 **VORYS’ QUALIFICATIONS AND EXPERIENCE**

11 3. Vorys, Sater, Seymour and Pease LLP provides business and legal counsel to
12 clients throughout the United States and around the world. Since its founding in 1909, Vorys has
13 grown into one of the largest law firms in the country, with approximately 375 attorneys who are
14 located in ten offices in Ohio, Washington, D.C., Texas, Pennsylvania, California, London, and
15 Berlin. Vorys represents thousands of clients, ranging from start-up businesses to Fortune 500
16 corporations, from non-profit organizations to governmental entities and industry trade groups,
17 and from individuals needing estate planning advice to defendants embroiled in sprawling, multi-
18 state class action litigation. Vorys offers each of those clients—large and small—an unflagging
19 commitment to excellent legal representation and outstanding client service.

20 4. Diversity is a core value at Vorys. Vorys’ commitment to diversity has created an
21 atmosphere in which people thrive and are encouraged to use their different talents, perspectives,
22 backgrounds, and experiences to serve our clients. Likewise, Vorys believes that through its
23 commitment to diversity, we better serve the communities in which we live and work. Since 2008,
24 Vorys has been recognized as one of the top gay-friendly workplaces in central Ohio on the Human
25 Rights Campaign’s Corporate Equality Index. Vorys earned Mansfield Certifications in 2021,
26 2022, 2023, and 2024. Vorys earned the Women In Law Empowerment Forum Gold Standard

1 (“WILEF”) Certification in 2019, 2020, 2021, and 2022. Vorys is one of only 32 law firms across
2 the United States to have earned the WILEF Gold Standard Certification designation in 2022.

3 5. Particularly relevant to this case, Vorys is a leader in litigation, including both
4 antitrust and class-action cases like this one. In connection with its litigation work, Vorys has
5 obtained hundreds of millions of dollars in settlements and trial verdicts for thousands of plaintiffs
6 over the years.

7 **THE VORYS TEAM IN THIS CASE**

8 6. I lead the Colvin Plaintiffs’ case along with my partners Timothy B. McGranor,
9 Douglas R. Matthews, and Kara M. Mundy.

10 7. Below, I provide biographies summarizing some of our relevant experience.

11 8. **Kenneth J. Rubin:** I am a partner with the Vorys’ Columbus, Ohio, office. I am
12 a member of the Litigation Group and the Chair of the Antitrust Subgroup. I have tried numerous
13 cases, including as first chair at trial in federal district court in a case regarding commercial
14 litigation and competition issues. I was co-lead counsel for plaintiffs in a multi-plaintiff
15 commercial fraud case against a national insurance company in which the jury returned a verdict
16 in our clients’ favor. I have represented litigants in several class-action cases, both on the plaintiff-
17 and defense-side. I have also achieved substantial class-action settlements on behalf of class
18 members in two cases. I was named a Columbus CEO Best Lawyer for Antitrust Law in 2023 and
19 2024, a Chambers and Partners Leading Lawyer in Antitrust in 2023 and 2024, and an Ohio Super
20 Lawyers Rising Star for Antitrust Litigation in 2016. I have been a member of the American Bar
21 Association (“ABA”), and previously served as a vice chair on the ABA’s Antitrust Law Section’s
22 Book and Treatises committee. I also served as the assistant to the chair of the section, who is also
23 a Vorys partner. Additionally, I was a member of the Ohio State Bar Association’s Antitrust
24 Section Council. I am a *summa cum laude* graduate of The Ohio State University, Michael E.
25 Moritz College of Law where I was also a member of the Order of the Coif. I previously served
26 as a law clerk to the Honorable James G. Carr, then Chief Judge of the United States District Court

for the Northern District of Ohio, and to the Honorable R. Guy Cole, Jr., of the United States Court of Appeals for the Sixth Circuit. I am admitted to practice in the United States Supreme Court, the U.S. Courts of Appeals for the Second Circuit and Sixth Circuit, the U.S. District Courts for the Northern District of Indiana, Northern District of Ohio, and Southern District of Ohio, and the State of Ohio. Attached hereto as **Exhibit 1** is a true and correct copy of my attorney profile, as the webpage appears on the Vorys website. My representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (I am part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Henry's Bullfrog Bees, et al. v. Sunland Trading, Inc. et al., Case No. 2:21-CV-00582-TLN-CKD, E.D. Cal.*** (I currently serve as antitrust counsel to Dutch Gold Honey, Inc. defending a putative class action alleging federal and California antitrust violations, in addition to fraud and RICO claims. That court recently granted a motion to dismiss, dismissing all claims with prejudice.);
- c. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183, D. Utah*** (I previously served as co-lead counsel for Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- d. ***Certified Windshield, LLC, individual and as assignee of Bryan Eckley v. Geico Indemnity Company, Case No. 17-CA-008686, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments

and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

e. ***Certified Windshield, LLC, individual and as assignee of Teri Stanton v. Geico Indemnity Company and Safelite Solutions, LLC, Case No. 18-CA-008249, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

f. ***Certified Windshield, LLC, individual and as assignee of Lourdes Gonzalez v. Geico Indemnity Company and Safelite Solutions, LLC, Case No. 18-CA-008410, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (I previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

g. ***In re Fresh & Process Potatoes Antitrust Litig., Case No. 4:10-MD-2186-BLW, D. Idaho*** (I previously served as counsel to Idahoan Potatoes defending a class action alleging federal antitrust violations related to allegations of price fixing and output restrictions. That case was settled without any acknowledgement of liability by Idahoan.);

h. ***FTC v. Promedica, Case No. 3:11-cv-00047-DAK, N.D. Ohio*** (I previously served as lead counsel to the University of Toledo Medical Center as a third-party intervenor in an action brought by the Federal Trade Commission seeking to enjoin a hospital merger.);

i. ***United States v. Bazaarvoice, Inc., Case No. 13-cv-00133-WHO, N.D. Cal.*** (I previously served as lead counsel to Abercrombie and Fitch in its capacity as a

third-party witness to an antitrust case in which the government sought to unwind a closed merger.);

j. ***Ohio v. American Express Co., Case No. 16-1454, Supreme Court of the United States*** (I represented the Merchant Advisory Group in the filing of an *amicus curiae* brief supporting petitioners in a case involving issues regarding two-sided platforms.);

k. ***myTriggers v. Google, Case No. 09CV-14836, Franklin County, Ohio*** (I previously defended Google against claims it violated Ohio's antitrust laws.);

l. ***Verizon Advanced Data, Inc. v. FrogNet, Inc., Case No. 05-cv-955, S.D. Ohio*** (I was lead trial counsel for counterclaim plaintiff in claims against Verizon involving competition issues.);

m. ***Williamson v. American Mastiff Breeders Council, et al., No. 2:09-cv-00172, S.D. Ohio*** (I was lead counsel for plaintiffs/counterclaim-defendants alleging violations of the Lanham Act and defending federal antitrust claims.);

n. ***Superior Production Partnership, dba PBSI v. Gordon Auto Body Parts Co., Ltd., Case No. 13-4466, U.S. Sixth Circuit Court of Appeals*** (I was counsel to plaintiff in a case alleging violations of federal antitrust law and the Lanham Act.);

o. ***Bartell, et al. v. LTF Club Operations Company, Inc., Case No. 2:14-CV-00401, S.D. Ohio*** (I was appointed co-lead class counsel with my partner, Mr. Thomas McCormick. That case settled with a significant cash recovery for class members. There were no objections to the settlement.);

p. ***Gascho v. Global Fitness Holding, LLC, Case No. 2:11-CV-00436, S.D. Ohio,*** (I was appointed as co-lead class counsel with my partner Mr. Thomas McCormick as well as attorneys from the Isaac Wiles law firm on September 30, 2013. The class-wide settlement in that case received final approval on July 16, 2014. Two objectors to the settlement appealed the final approval to the United States Court of

Appeals for the Sixth Circuit. I successfully argued the appeal for the class, 822 F.3d 269 (2016), and represented the class in defeating a petition for certiorari filed by the appellants in the United States Supreme Court.);

q. ***Tartaglia v. Global Fitness Holdings, LLC, Case No. 11 CI 1121, Boone County Circuit Court, Commonwealth of Kentucky*** (This was combined with *Gascho* for settlement purposes.).

9. **Timothy B. McGranor:** Mr. McGranor is a partner in Vorys' Columbus, Ohio, office. He is a member of the Litigation Group, is the Chair of the Appellate Subgroup, and has significant experience in complex litigation matters. In addition to his trial work in the state and federal courts, Mr. McGranor has appeared before the courts of appeals in Ohio, the U.S. Courts of Appeals for the Sixth and Ninth Circuits, and regularly participates in actions before the Ohio Supreme Court. He was named an Ohio Super Lawyers Rising Star for business litigation in 2007 and from 2010 to 2015, and a Columbus CEO Top Lawyer in 2015 and 2016. He is admitted to practice in the U.S. Courts of Appeals for the Sixth Circuit and Ninth Circuit, the U.S. District Courts for the Northern District of Ohio, Southern District of Ohio, and Eastern District of Michigan, and the State of Ohio. Attached hereto as **Exhibit 2** is a true and correct copy of Mr. McGranor's attorney profile, as the webpage appears on the Vorys website. His representative experience includes:

a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (Mr. McGranor is part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);

b. ***Gateway Royalty LLC, et al. v. EAP Ohio LLC et al., Docket No. 5:20-cv-02813, N.D. Ohio*** (Mr. McGranor represents a defendant in a pending putative class action

1 involving thousands of potential class members over claimed underpayment of oil
2 and gas royalties.);

3 c. ***Grissom, et al. v. Antero Resources Corporation, Docket No. 2:20-cv-02028, S.D.***

4 **Ohio** (Mr. McGranor represents a defendant in a certified class action involving
5 hundreds of potential class members over claimed underpayment of oil and gas
6 royalties.);

7 d. ***Henceroth, et al. v Chesapeake Exploration, LLC, Docket No. 4:15-cv-02591,***

8 **N.D. Ohio** (Mr. McGranor represented a defendant in a certified class action
9 involving hundreds of class members of claimed underpayment of oil and gas
10 royalties. This case resulted in a defense judgment on summary judgment.);

11 e. ***Zehentbauer Family Land LP, et al. v. Chesapeake Exploration, L.L.C., et al.,***

12 **Docket No. 4:15-cv-02449, N.D. Ohio** (Mr. McGranor represented a defendant in
13 a certified class action involving hundreds of class members of claimed
14 underpayment of oil and gas royalties. This case resulted in a defense judgment on
15 summary judgment.);

16 f. ***Hope Christian Fellowship, et al. v. Chesapeake Energy Corporation, et al.,***

17 **Docket No. 4:15-cv-02275, N.D. Ohio** (Mr. McGranor represented a defendant in
18 a putative class action over claimed underpayment of oil and gas royalties.);

19 g. ***Riggs v. Patriot Energy Partners, LLC, et al., Court of Appeals of Ohio, Seventh***

20 **Appellate District, Carroll County, 2014-Ohio-558** (Mr. McGranor represented
21 a defendant in a putative class action claiming fraud and seeking rescission of oil
22 and gas leases.);

23 h. ***Wilson, et al. v. Columbia Gas Transmission, LLC, Docket No. 2:12-cv-01203,***

24 **S.D. Ohio** (Mr. McGranor represented a putative class of landowners claiming
25 trespass and inverse condemnation by defendant. Mr. McGranor represented more
26 than 400 individuals. Following counterclaims by defendant to exercise eminent

domain against hundreds of individual plaintiffs, the case was ultimately settled on confidential terms.);

i. ***Salyer et al. v. Honda of America Mfg., Inc., et al.***, Docket No. 2:08-cv-01060, S.D. Ohio and ***Shanks v. Honda of America Mfg., Inc., et al.***, Docket No. 2:08-cv-01059, S.D. Ohio (Mr. McGranor represented a defendant manufacturer in putative class actions asserting claims under ERISA.);

j. ***Acheson v. Express, LLC***, Case No. 10-CV-135335, Superior Court, County of Santa Clara, California (Mr. McGranor represented a defendant in a class action asserting breach of California wage and hour laws. The case was settled on a class-wide basis.);

k. ***Owner Operator Independent Drivers Association Inc. et al. v. Comerica Bank***, Docket No. 2:05-cv-00056, S.D. Ohio (Mr. McGranor represented a defendant bank against claims by certified class alleging breach of constructive trust and related claims.).

10. **Douglas R. Matthews:** Mr. Matthews is a partner in Vorys' Columbus, Ohio, office. He is a member of the Litigation Group and the Chair of the firm's Electronic Discovery Subgroup. He has represented both corporate and public entities in a variety of litigation matters, including multiple putative class actions and complex antitrust matters. He has significant experience in complex litigation matters, including class action litigation on both the plaintiff and defendant sides. Mr. Matthews has represented numerous businesses with regard to the management and discovery of electronically stored information. In addition to his trial work in the state and federal courts, Mr. Matthews has appeared before the Sixth Circuit and participated in actions before the Ohio Supreme Court. He was named a Columbus CEO Top Lawyer in Columbus from 2017 to 2021 and a Best Lawyer in America for Commercial Litigation from 2013 to 2025. He previously served as a law clerk to the Honorable Joseph P. Kinneary of the United States District Court for the Southern District of Ohio and to the Honorable Alan Norris of the

United States Court of Appeals for the Sixth Circuit. He is admitted to practice in the U.S. Court of Appeals for the Sixth Circuit, the U.S. District Court for the Southern District of Ohio, and the State of Ohio. Attached hereto as **Exhibit 3** is a true and correct copy of Mr. Matthews' attorney profile, as the webpage appears on the Vorys website. His representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (Mr. Matthews is part of the leadership team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183, D. Utah*** (Mr. Matthews was previously part of the Vorys team representing Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- c. ***In re Lawnmower Engine Horsepower Marketing & Sales Practices Litigation; Case No. 2:08-md-01999, E.D. Wis.*** (Mr. Matthews was part of the Vorys leadership team representing Tecumseh Products Company, Tecumseh Power Company, and Platinum Equity LLC in a consumer class action.);
- d. ***Bacon v. Honda of America, Mfg., Case No. C2-99-803, S.D. Ohio*** (Mr. Matthews was part of the Vorys leadership team representing Honda of America Mfg. in a wide-ranging employment class action alleging race discrimination.);
- e. ***Hoffman v. Honda of America, Mfg., Case No. 3:97cv248, S.D. Ohio*** (Mr. Matthews was part of the Vorys leadership team representing Honda of

America Mfg. in an employment class action alleging gender discrimination.).

11. **Kara M. Mundy:** Ms. Mundy is a partner in Vorys' Columbus, Ohio, office. She is a member of the Litigation Group and the Antitrust Subgroup. She regularly represents litigants in complex disputes involving antitrust and class-action allegations, among other cases. She is a member of the American Bar Association's Antitrust Section and was chosen to be a Young Lawyer Representative to the Pricing Conduct Committee for the 2021-2022 program year. Ms. Mundy has significant experience counseling clients on antitrust issues related to price fixing, no-poach, no-hire and non-solicitation arrangements, compliance, competitive bidding, and mergers and acquisitions. As part of her antitrust practice, Ms. Mundy works with manufacturers and retailers on issues relating to Minimum Advertised Pricing policies and Resale Price Maintenance. She advises clients regarding vertical pricing issues and how business clients can structure their relationships with distributors and retailers to avoid violations of the Sherman, Clayton, and Robinson-Patman Acts. She regularly trains executives and sales teams on competition issues and how companies can structure their business operations and communications to lower their antitrust risk. As part of her work on behalf of clients who are navigating competition and marketplace issues, Ms. Mundy represents a Fortune 500 company bringing price gouging and Lanham Act, and state law corollary, claims against unauthorized sellers of counterfeit products. She has experience obtaining preliminary and permanent injunctive relief, seizure orders, and judgments against bad actors in the marketplace, particularly those markets that have seen increased activity as a result of the global pandemic. Her notable antitrust litigation experience includes representing a contact lens seller in defending a class action alleging antitrust claims related to keyword bidding, and representing a government contractor in defending a class action alleging antitrust claims related to purported no-poach and no-hire agreements. She was named a Columbus CEO Best Lawyer for Antitrust Law from 2022 to 2024, a Columbus CEO Best Lawyer for Commercial Litigation in 2023, an Ohio Super Lawyers Rising Star for Antitrust Litigation from 2022 to 2025, and a Best Lawyers in America One to Watch for Commercial

Litigation from 2022 to 2025. Ms. Mundy is admitted to practice in the U.S. Court of Appeals for the Sixth Circuit, the U.S. District Court for the Southern District of Ohio, and the State of Ohio. Attached hereto as **Exhibit 4** is a true and correct copy of Ms. Mundy's attorney profile, as the webpage appears on the Vorys website. Her representative experience includes:

- a. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., 1:05-md-01720-JG-JO, E.D.N.Y.*** (Ms. Mundy is part of the team of attorneys prosecuting antitrust claims against Visa and Mastercard on behalf of two groups of plaintiffs (23 major merchants), *Target et al. v. Visa et al.*, Case No. 1:13-cv-03477, S.D.N.Y. and *Grubhub et al. v. Visa et al.*, Case No. 1:19-cv-07273, N.D. Ill. Those cases involve issues regarding two-sided platforms.);
- b. ***Henry's Bullfrog Bees, et al. v. Sunland Trading, Inc. et al., Case No. 2:21-CV-00582-TLN-CKD, E.D. Cal.*** (Ms. Mundy currently serves as antitrust counsel to Dutch Gold Honey, Inc. defending a putative class action alleging federal and California antitrust violations, in addition to fraud and RICO claims. That court recently granted a motion to dismiss, dismissing all claims with prejudice.);
- c. ***Thompson v. 1-800 Contacts, Inc., et al., Case No. 2:16-cv-01183, D. Utah*** (Ms. Mundy previously served as co-lead counsel for Luxottica defending a class action alleging federal antitrust violations related to allegations of keyword bidding on online advertisement and search platforms. That case was settled without any acknowledgement of liability by Luxottica.);
- d. ***Certified Windshield, LLC, individual and as assignee of Bryan Eckley v. Geico Indemnity Company, Case No. 17-CA-008686, Thirteenth Judicial Circuit, Hillsborough County, Florida*** (Ms. Mundy previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and

monopolization claims brought under Florida state antitrust law.);

e. *Certified Windshield, LLC, individual and as assignee of Teri Stanton v. Geico Indemnity Company and Safelite Solutions, LLC*, Case No. 18-CA-008249, Thirteenth Judicial Circuit, Hillsborough County, Florida (Ms. Mundy previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

f. *Certified Windshield, LLC, individual and as assignee of Lourdes Gonzalez v. Geico Indemnity Company and Safelite Solutions, LLC*, Case No. 18-CA-008410, Thirteenth Judicial Circuit, Hillsborough County, Florida (Ms. Mundy previously served as antitrust counsel to a national auto glass repair and replacement provider responsible for oral arguments and motions practices opposing price fixing and monopolization claims brought under Florida state antitrust law.);

g. *Hunter, et al. v. Booz Allen Hamilton, et al.*, Case No. 2:19-cv-00411-ALM, S.D. Ohio (Ms. Mundy was co-counsel for one of the defendants in this antitrust class action alleging that government contractors entered into illegal, anticompetitive no-poach and non-solicitation agreements. The litigation ultimately settled.).

VORYS' SUCCESS ON BEHALF OF ANTITRUST AND CLASS ACTION LITIGANTS

12. Unlike many plaintiffs' firms who only litigate on one side of the "v," Vorys regularly represents both plaintiffs and defendants in antitrust and class action litigation, which provides Vorys with unique experience and expertise. Attached as **Exhibit 5** is a summary of Vorys' class action capabilities.

13. Vorys regularly defends clients in class action lawsuits brought in federal and state

1 courts across the country. Because the class action mechanism may allow thousands of individual
2 claims to be pursued jointly, such cases can present high-stakes challenges. Such cases also
3 involve unique standards and procedures that govern the proper definition of putative classes,
4 certification of classes, notice, settlement, and trial. Vorys is experienced with the requirements
5 of the federal and state versions of Rule 23, the standing and constitutional issues that may arise
6 in the class action context, and the case law addressing class certification issues in cases involving
7 a wide variety of different claims, from insurance to antitrust to data security to consumer
8 protection statutes and related common law claims. Vorys' class action litigators are proficient at
9 creatively developing and persuasively presenting arguments related to class certification, and
10 marshalling the lay and expert evidence that support those arguments. Vorys also has opposed
11 certification of classes that include Vorys' clients, when those clients do not wish to be part of the
12 proposed class and are at risk of being bound by the results obtained by class counsel. These cases
13 include complex antitrust actions.

14 14. Vorys has significant experience in counseling clients on the appropriate forum for
15 the defense of particular class actions and has employed the Class Action Fairness Act (CAFA)
16 and other mechanisms to remove state court class actions to federal court. When Vorys' clients
17 are involved in class actions pending in multiple federal courts, Vorys has used the Judicial Panel
18 on Multidistrict Litigation process to coordinate the cases, avoid duplication, and reduce defense
19 costs. Vorys has successfully advocated sequenced discovery, so that class issues may be decided
20 before onerous, and potentially unnecessary, class-wide discovery on the merits of claims occurs.
21 In cases where classes are certified, Vorys has worked successfully with in-house counsel to
22 manage both liability risks and defense costs – whether the client ultimately decides to litigate the
23 claims on the merits or to proceed with a class-wide settlement.

24 15. On the defense side, Vorys has achieved victories for companies across industries.
25 These include negotiating a cost-effective settlement on favorable terms of class claims against
26 national bank arising out of allegedly defective notices of repossession and sale of automobiles

1 securing auto loans, litigating and ultimately negotiating a favorable settlement of class claims
2 against consumer lender alleging defective disclosure of vendor single interest insurance and
3 defective notices of repossession and sale of automobiles, and quickly and cost-effectively
4 resolving class claims on behalf of a lender on claims for fraud, breach of contract, unjust
5 enrichment, and conversion. Vorys has also served as class counsel in two consumer class actions
6 resulting in multi-million dollar settlements.

7 16. In addition to its work across industries and for both plaintiffs and defendants,
8 Vorys is uniquely positioned because it has a depth of experience in antitrust and has practiced in
9 the antitrust area with great success. Vorys' antitrust experience spans both class actions and
10 individual claims, and includes:

- 11 a. Defeating class certification on appeal to the U.S. Court of Appeals for the Second
12 Circuit on behalf of retailers who opposed being included in a mandatory class
13 challenging Visa and Mastercard practices related to the charging of interchange
14 fees.
- 15 b. Representing a contact lens seller in connection with an antitrust class action arising
16 out of internet advertising practices in *Thompson et al. v. 1-800 Contacts Inc.* (in
17 the District Court for Utah).
- 18 c. Representing a food processor in connection with an antitrust class action arising
19 out of alleged supply restrictions and price fixing in both direct and indirect
20 purchaser claims (in the District Court for Idaho).
- 21 d. Defending a paving company in litigation accusing it and other West Virginia
22 asphalt paving companies of price fixing and other anticompetitive behavior.
- 23 e. Defending antitrust and other claims brought against a major U.S. university on
24 behalf of a putative class of former athletes. Vorys was lead counsel for the
25 university.
- 26 f. Representing 18 major retailers, in a lawsuit filed in the Southern District of New

York alleging violations of U.S. antitrust laws by Visa and MasterCard. The lawsuit alleges that Visa's and MasterCard's setting of "default" interchange, and their honor-all-cards, anti-steering, and other rules violate Section One of the Sherman Act by preventing competition among issuing banks for merchant acceptance and charging a monopoly price to merchants who accept Visa and MasterCard. The lawsuit alleges that, but for these anti-competitive rules, banks that issue credit and debit cards would compete with each other for merchant acceptance and that such competition would lower merchants' acceptance costs. Some of the clients include: Target Corporation, Macy's, Inc., The TJX Companies, Inc., Staples, Inc., Office Depot, Inc./OfficeMax, Inc., L Brands, Inc., Victoria's Secret Stores, LLC, Big Lots Stores, Inc., Abercrombie & Fitch Co., Ascena Retail Group, Inc., Saks Inc., The Bon-Ton Stores, Inc., Chicos FAS, Inc., Luxottica, Kohl's, J.C. Penney, and American Signature.

g. Representing seven major retailers, in a lawsuit filed in the Northern District of Illinois alleging violations of U.S. antitrust laws by Visa and MasterCard. The lawsuit alleges that Visa's and MasterCard's setting of "default" interchange, and their honor-all-cards, anti-steering, and other rules violate Section One of the Sherman Act by preventing competition among issuing banks for merchant acceptance and charging a monopoly price to merchants who accept Visa and MasterCard. The lawsuit alleges that, but for these anti-competitive rules, banks that issue credit and debit cards would compete with each other for merchant acceptance and that such competition would lower merchants' acceptance costs. Vorys' clients include: GrubHub, Bob Evans Restaurants, Belk, Pandora, Leslie's Pool Supplies, Uline Inc., and BJ's Wholesale Club.

h. Representing an automobile manufacturer in an industry-wide antitrust investigation by the FTC of procurement practices.

- i. Representing a major health care insurer in arbitration with a hospital relating to a “most favored nations” clause.
- j. Representing at trial and on appeal a major health insurance company challenging territorial restrictions imposed on it by a national trade association.
- k. Representing medical groups with forming alliances with other groups and the degree of integration needed to survive antitrust scrutiny.
- l. Challenging the attempts of a major seller of credit report information to impose anticompetitive restraints in the mortgage credit reporting industry.
- m. Defending a case alleging that rules governing men’s Division I college basketball violated antitrust laws.
- n. Representing a major national retailer in settlement of antitrust litigation.
- o. Representing a defendant drug manufacturer in an action involving multiple Sherman Act and Robinson-Patman Act claims.
- p. Representing the president of an oil field service company as an individual defendant in a criminal price-fixing case trial and securing an acquittal.
- q. Representing an individual in the grand jury investigation that led to the Archer-Daniels-Midland antitrust prosecution.
- r. Representing a defendant drug manufacturer in an action involving multiple Sherman Act and Robinson-Patman Act claims.
- s. Representing an international fast food chain restaurant in an action involving Sherman Act and contract claims.
- t. Obtaining dismissal in the pleadings of monopolization and conspiracy claims on behalf of an Internet search engine client.
- u. Defending multiple counterclaims and defenses, including claims under the Robinson-Patman Act, arising out of distributor relationship for automotive lighting products.

v. Defending the world’s largest provider of computer network services to libraries against monopolization claims.

w. Obtaining dismissal on the pleadings of all antitrust allegations in a case involving claims of horizontal price fixing, group boycott, and conspiracy to monopolize on behalf of a breeder council.

17. Vorys’ mix of plaintiff- and defense-side work provides what I believe to be a well-rounded perspective and unique and valuable insights into both bars and benefits our clients no matter which side of the dispute our clients end up on.

**VORYS’ EXHAUSTIVE PRE-FILING INVESTIGATION
AND FIRST-FILED COMPLAINT**

18. Vorys, together with the interim co-lead class counsel in the developer class, is responsible for originating and organizing the prosecution of this important antitrust case against Valve’s dominant online gaming platform, Steam.

19. Vorys filed the first antitrust action against Valve Corporation (“Valve”) on behalf of consumers on January 28, 2021, in the Central District of California – *Sean Colvin et al. v. Valve Corp.*, Case No. 2:21-cv-00801, ECF 1 (filed Jan. 28, 2021) (the “Colvin action”) – after eighteen months of factual investigation into Valve’s business practices on its dominant Steam platform and their effects.

20. The Colvin action challenged Valve’s imposition of its most-favored-nations clause that prohibited game publishers from selling their games at lower prices on the few platforms that compete with Valve’s dominant Steam platform, and thereby artificially inflated game prices to supra-competitive levels. *Colvin Compl.* ¶¶ 3–4. Colvin sought certification of: (i) a class of purchasers seeking damages for supra-competitive prices of PC games; (ii) a class of purchasers seeking injunctive relief; (iii) a sub-class of parents seeking damages for their purchases of PC games for their minor children; and (iv) a sub-class of parents seeking injunctive relief. *Id.* ¶¶ 98–

1 100.

2 21. Vorys started developing consumer antitrust claims in 2019 by conducting a factual
3 investigation into Valve's business practices on the Steam platform.

4 22. Vorys pre-litigation efforts included intense research into Valve's business,
5 publicly available documents, chat rooms, blogs, Reddit threads, and consumer complaints. At
6 significant time and expense, Vorys spoke with several economists and retained a well-
7 credentialed economist specializing in these issues to vet the economic theories at play.

8 23. Aware of Vorys' *Colvin* action, Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn
9 Emanuel") and Constantine Cannon LLP ("Constantine Cannon") reached out to Vorys and
10 discussed how to consolidate the cases. After conferring with these firms, Vorys agreed the
11 Western District of Washington would be a suitable venue and executed a stipulation with Valve
12 to move the *Colvin* action to this Court. Collectively, counsel sought leave of this Court to
13 consolidate *Colvin* and *Wolfire* into a single action, which this Court granted on May 20, 2021.
14 ECF 28; ECF 29.

15 24. To address the common interests of both consumers and publishers, Quinn
16 Emanuel, Constantine Cannon, and Vorys agreed to jointly file the Consolidated Amended Class
17 Action Complaint ("CAC"), which they did on June 11, 2021. ECF 34.

18 25. On October 25, 2021, this Court stayed the *Colvin* Plaintiffs' claims pending
19 arbitration after holding that they agreed to a mandatory arbitration clause in Valve's Steam
20 Subscriber Agreement ("SSA"). ECF 66. On October 4, 2024, Vorys moved to lift the litigation
21 stay due to recent changes in Valve's SSA—notably, the SSA no longer contains a mandatory
22 arbitration clause or class action waiver. ECF 370; ECF 362-1. Presently, Vorys is not involved
23 in arbitrations so as to avoid any perceived and/or actual conflict.

24 26. Wilson Sonsini Goodrich & Rosati P.C. ("Wilson Sonsini") and Lockridge Grindal
25 Nauen P.L.L.P. ("Lockridge") filed their own complaint against Valve on behalf of Dark Catt
26 Studios Holdings, Inc. *Dark Catt Studios Holdings, Inc. et al. v. Valve Corp.*, Case No. 2:21-cv-

1 00872-JCC, ECF 1. This action was consolidated with the combined *Colvin* and *Wolfire* actions.
2 ECF 90.

3 27. Following the consolidation, this Court ruled on the collective *Wolfire* Plaintiffs'
4 unopposed motion to appoint interim lead class counsel and designated Vorys to serve as an
5 Executive Committee member, with Quinn Emanuel, Constantine Cannon, Lockridge, and Wilson
6 Sonsini to serve as Co-Lead Class Counsel. ECF 92.

7 28. In its role as executive committee member in *In re Valve Antitrust Litigation*, Vorys
8 attorneys participated in the discovery effort to identify evidence demonstrating Valve's unlawful
9 conduct that harmed (and continues to harm) both consumers and developers, including spending
10 over 1,000 hours reviewing and coding the more than 2.5 million documents produced by Valve,
11 taking four depositions of Valve employees, and assisting with the depositions and reports of two
12 experts.

13 29. To date, Vorys has spent approximately 6,000 hours litigating against Valve.

14 30. Consumers and developers have the same theory of the case: Valve's
15 anticompetitive conduct harms both sides of the two-sided Steam platform with every transaction.
16 Thus, Vorys' work as a developer executive committee member, which included conducting
17 discovery and working with experts, directly benefits the consumers plaintiffs.

18 31. The expert for the putative developer class, Dr. Steven Schwartz, in this case
19 prepared a damages model that avoids inconsistent theories and duplicative damages between
20 developers and consumers, thereby promoting consistent results in this litigation. Vorys
21 contributed to qualifying Dr. Schwartz as an expert, further highlighting Vorys' work, experience,
22 knowledge, and resources in this case.

23 32. Although there is no conflict between representing developers and consumers,
24 Vorys was not appointed co-lead counsel in the developer litigation intentionally to preserve its
25 ability to serve as lead counsel for the consumers if their claims resumed in court.

26 33. In recent months, Elliott Counsel, Hepler Counsel, and Drake Counsel filed suit on

1 behalf of a putative class of consumers alleging substantially the same claims as the Colvin
 2 Plaintiffs. ECF 394 at 2. The law firms behind these class actions repeated the substance—and in
 3 many instances Elliott Counsel repeated the exact same words—from the Consolidated Amended
 4 Class Action Complaint in *In re Valve Antitrust Litigation* authored by Vorys and co-counsel.
 5 Compare ECF 34, with *Elliott v. Valve Corp.* ECF 1, and *Hepler v. Valve Corp.* ECF 1, and *Drake*
 6 *v. Valve Corp.* ECF 1.

7 34. I have reviewed the *Elliott* Complaint. Attached hereto as **Exhibit 6** is a table that
 8 provides forty examples of the *Elliott* Complaint parroting the exact (or almost exact) same
 9 language used in the *In re Valve Antitrust Litigation* Consolidated Amended Class Action
 10 Complaint. **Exhibit 6** is a true and accurate comparison of the statements in the Consolidated
 11 Amended Class Action Complaint in *In re Valve Antitrust Litigation* and in the Class Action
 12 Complaint in *Elliott et al. v. Valve Corp.* Compare ECF 34, with *Elliott et al. v. Valve Corp.*, Case
 13 No. 2:24-cv-01218, ECF 1.

14 **COMMITMENT TO FEE, TIME, AND COST CONTROLS**

15 35. I and the other attorneys at Vorys are committed to litigating the Colvin Plaintiffs’
 16 claims as efficiently and effectively as possible. Vorys has already contributed, and will continue
 17 to contribute, substantial resources to prosecute this case against Valve.

18 36. Vorys has extensive knowledge of the law, facts, and economics in this case from
 19 the thousands of hours it has spent investigating and litigating these claims. Additionally, Vorys
 20 has litigated antitrust claims on behalf of plaintiffs in the two-sided platform context for over a
 21 decade.

22 37. Vorys has sophisticated technological capabilities that will be utilized to reduce
 23 costs. Vorys has a robust litigation technology department, which has already provided support
 24 across the firms and e-discovery vendors in this litigation.

25 38. Vorys can proceed expeditiously to class certification if appointed interim lead
 26 class counsel. Vorys has been involved with depositions, experts, and written discovery in this

1 case, including Valve's production of more than 2.5 million documents.

2 39. By contrast, the class actions that were recently consolidated with this case are far
3 less developed, with Valve not even having responded to their respective complaints. Given its
4 familiarity with this case, Vorys will need far less discovery and is poised to reach class
5 certification and trial much faster than other law firms.

6 40. Appointing Vorys as interim lead class counsel avoids the duplicative litigation and
7 lengthy delay that will surely occur if any other law firm were appointed.

8 41. I am familiar with this Court's expectations regarding attorneys' fees in class
9 actions, as reflected in orders appointing interim class counsel in other cases.


10 42. Should this Court appoint Vorys as interim co-lead class counsel, I will:

11 a. perform a monthly review of all billing records generated by Vorys for work
12 performed on behalf of the class to ensure that there are no duplicative or inefficient
13 entries.

14 b. require that billing be done on a monthly basis and that billing be descriptive in
15 nature such that determinations can be made regarding duplication and efficiency.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on this 20th day of December, 2024, in Columbus, Ohio.

18
19
20 By: 
21 Kenneth J. Rubin
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24
25
26